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REMARKS

Applicant has carefully reviewed and considered the Office Action of 12 October 2006. In response the applicant traverses the rejections without amending the claims. The individual substantive rejections are discussed below.

Double Patenting Rejection Based Upon U.S. Patent 6,340,650

Applicant submits herewith a properly executed Terminal Disclaimer in compliance with 37 CFR 1.321 to overcome the non-statutory double patenting rejection.

Rejection of Claims 1, 4, 7, 16, 17 and 20-23 under 35 USC §103(a) as Being Unpatentable Over the Brown et al. Article

The Examiner argues that the Brown et al. article teaches, "crushing waste glass to form a glass powder, mixing the glass powder with an additive (notably a binder and water), forming the powder mixture into the desired shape, and firing the resulting piece to produce a product having ceramic-like properties (page 2165, last paragraph of the first column through the second column)." Next, the Examiner notes that the Brown et al. article does not teach the method of using fiberglass waste as the starting material in this process. However, the Examiner then argues that, "... it would have been obvious to one of ordinary skill in the art that any type of waste glass, including waste fiber glass, could be used in the method taught by Brown."

Applicant does not agree in any way with this conclusion. Brown does not teach or suggest to one skilled in the art that "any type of waste glass" may be utilized in the process disclosed. Clearly, specific glass formulations and contaminants in the glass determine whether or not a waste glass is suitable for processing in accordance with the Brown et al. article. At column 1 on page 2164, the Brown et al. article explicitly notes that mixtures of oxidized glass and reduced glass cause foaming problems in the glass tank when melted together. This demonstrates that all glasses are not suitable for recycling as suggested by the Examiner.

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Significantly, glass fibers typically have a sizing coating. As set forth at paragraph 3 in patent publication no. US 2006/0057319 A1 to Gleich et al. (Exhibit A to this document) "the sizing are known and normally contain a coupling agent such as one or more silenes, one or more lubricants and one or more film formers or binders, and can contain other ingredients such as dispersants, fillers, stabilizers and others." Glass fiber formulations may also differ significantly from typical waste glass product. For example, as known in the art, D-glass is a high-boron-content glass.

While the Brown et al. article might make it "obvious to try" fiberglass waste in a method for making a ceramic product it is well established in a long line of cases including *In re Fine*, 5 USPQ 2d 1596 (Fed Cir 1988), *In re Geiger*, 2 USPQ 2d 1276 (Fed Cir 1987) and *In re Goodwin*, 198 USPQ 1 (CCPA 1978), that "obvious to try" is not a legitimate test of patentability. Stated another way, the Brown et al. reference fails to support the Examiner's contention that it would be obvious to use glass fiber waste in the Brown et al. method.

Not only does the Brown et al. article fail to teach or suggest using fiberglass waste to make a ceramic product, it also explicitly fails to teach or suggest the step of granulating the glass-additives mixture into granulated particles before forming those granulated particles into a green ceramic article (see present claim 1). In the paragraph bridging columns 1 and 2 on page 2165 of the Brown et al. article it is only stated that a small amount of binder and water are added to the ground glass. There is no teaching or suggestion whatsoever in the Brown et al. article to indicate any granulating of the glass-additives mixture into granulated particles before forming of the green ceramic article.

As noted above, the Examiner has acknowledged that the Brown et al. article does not teach the method of using fiberglass waste as the starting material in any process for making a ceramic product. Further, since the Brown et al. article does not teach that "any glass" may be used in such a process it doesn't teach or suggest to one skilled in the art that fiberglass waste may be used. Still further, the Brown et al. article in no way teaches or suggests granulating the glass-additives mixture into granulated particles as explicitly set forth in claim 1. Accordingly, claim 1 patentably

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distinguishes over the Brown et al. article and should be formally allowed. Claims 4, 7, 16, 17 and 20-23 which depend from claim 1 and are rejected on the same grounds are equally allowable for the same reasons.

Rejection of Claims 5, 6, 8, 9, 14, 15, 18, 19, 24 and 26 Under 35 USC 103(a) as Being Unpatentable Over Brown et al. when Considered in Combination With U.S. Patent 5,830,251 to Simpson

As noted above, the primary reference to Brown et al. fails to teach or suggest that fiberglass waste may be used in any method for making a ceramic product, much less the specific method as set forth in these claims. In addition, the Brown et al. reference completely fails in any way to teach or suggest the step of granulating the glass-additives mixture into granulated particles and then forming the granulated particles into a green ceramic article as explicitly set forth in claim 1 from which these claims depend.

While the secondary reference to Simpson et al. teaches drying a glass powder-additives mixture in a spray dryer to form a free flowing granular feed for the tile presses, like the primary reference to Brown et al., it also fails to teach or suggest utilizing fiberglass waste in such a process. Accordingly, these claims should also be allowed.

Rejection of Claims 10, 11-13 and 25 under 35 USC 103(a) as Being Unpatentable over Brown et al. in view of U.S. Patent 5,792,524 to Lingart

As noted above, the primary reference to Brown et al. fails to teach or suggest using fiberglass waste in any method for making a ceramic product. Additionally, the primary reference to Brown et al. fails to teach the step of granulating the glass-additives mixture into granulated particles as explicitly set forth in claim 1 from which these claims depend. Applicant fails to note where the secondary reference to Lingart et al. teaches or addresses the shortcomings noted above with respect to the primary reference. Accordingly, the combination of references fails to provide a proper basis for the rejection of these claims and they should be allowed.


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Conclusion

In summary, all of the pending claims patentably distinguish over the art and should be formally allowed. Upon careful review and consideration it is believed that the Examiner will agree with this proposition. Accordingly, the early issuance of a formal notice of allowance is earnestly solicited.

If any fees are due in connection with the filing of this response, including any fee for a required extension of time under 37 CFR 1.136(a) for which Applicant hereby petitions, please charge all necessary fees to Deposit Account No. 50-0568.

Respectfully submitted,


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APPENDIX